IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.510 OF 1999

Pitamber Dayaram Thakur & Anr. ....Petitioners
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.G.K. Masand with Ms.S.R. Sawant for the Petitioners.

Mr.G.W. Mattos, AGP for Respondent Nos.2 and 3.

Mr.V.T. Lulia for Respondent No.7.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 5TH APRIL, 2007.

ORAL ORDER : (PER R.M. SAVANT, J.)

1. This Petition filed under Article 226 of the Constitution of India is an unfortunate case where two real brothers i.e. the Petitioner No.1 and Respondent No.7 are litigating against each other for last more than 10 years. The bone of contention is the tenement/flat bearing No.16/1999 on the second floor of building No.6 in Ram Krishna Nagar and in the Co-Operative Society known as Ram Krishna Nagar Melody Co-Operative Housing Society Ltd. The Petitioners by the above Petition filed under Article 226 of the Constitution of India are impugning the order dated

24.3.97 and two orders both dated 18.12.1998 passed by the Competent Authority under the provisions of Maharashtra Housing Area and Development Act 1976 (hereinafter referred to for the brevity sake as the said Act). By the said order dated 24.3.97 the Petitioners Appeal against their eviction has been dismissed, whilst by two order dated 18.12.98 the Petitioners case for regularisation has been rejected whilst that of the Respondent No.7 has been accepted.

2. The factual matrix giving rise to the filing of the above Petition can be stated thus :-

. The original allottee in respect of the said tenement/flat No.16/199 on the second floor in building No.6 was one N.H. Krishnan who was allotted the said flat by the then Bombay Housing Board some time in December, 1950. The said N.H. Krishnan transferred his right, title and interest in respect of the said flat to one Manjeet Chadha under the agreement for transfer dated 7.4.1986. Thereafter by a further agreement for transfer dated 21.11.1989 right, title and interest in respect of the said tenement/flat was purchased by Respondent No.7 herein for a consideration of Rs.3,45,000/-. Respondent No.7 thereafter became a member of the society of the flat

owners of the concerned building which society was known as Melody Co-Operative Housing Society. Respondent No.7 applied to MHADA for regularisation of allotment of the tenement/flat in his name.

3. It appears that in December, 1992 on a routine inspection of the tenement/flat in question, the Estate Manager of MHADA reported that the tenement/flat in question was in occupation of Petitioner No.1 and his family members though it stood in the name of Mr.N.H. Krishnan and therefore, a report was submitted that the said tenement/flat was in unauthorised occupation. On receipt of the said report, the proceedings under Section 66(1) of the said Act were initiated and the eviction order dated 23.4.1997 came to be passed evicting all the occupants from the tenement/flat in question and the same was sealed. In the said order of eviction, leave was granted to Respondent No.7 to establish his claim in respect of the tenement/flat in question in the light of deed of transfer dated 21.11.1989 and other documents executed by the original allottee in his favour. It appears that subsequently after examining the relevant documents, MHADA regularised the tenement/flat in favour of Respondent No.7 herein by an order passed under the said Act.

4. The Petitioners herein being aggrieved by the order of eviction dated 23.4.1997, filed Writ Petition No.5072 of 1998 in this Court, challenging the said order of eviction. It was the case of the Petitioner No.1 herein who was Respondent No.3 in the said Petition, that he had also contributed a sum of Rs.1,25,000/- towards the purchase of the said tenement/flat along with his brother i.e. Respondent No.7, though the documents stood in the name of his brother i.e. Respondent No.7. The said Writ Petition was disposed of by a Hon'ble Division Bench of this Court by an order dated 7.10.1998 directing that the Competent Authority of MHADA would reexamine the claims of the Petitioner herein as well as Respondent No.7 herein and pass a speaking order in accordance with law. In compliance with the said directions of this Court, the Competent Authority of MHADA passed the order dated 18.12.1998 rejecting the claim of the Petitioner herein and confirming the allotment/regularisation of the tenement/flat in the name of Respondent No.7 herein.

. The said order dated 18.12.1998 passed by the MHADA has been challenged by the present Petition. The Petition challenges the order of the Appellate

Authority dated 23.4.97 which confirms the order of the Competent Authority and also the two orders dated 18.12.98 whereby the claim of the Petitioner No.1 for regularisation has been rejected while that of Respondent No.7 has been accepted. In the above Petition, by an order dated 6.3.1999, this Court appointed a Conciliator as regards the dispute between the parties. The said Conciliator was a Hon'ble Retired Judge of this Court. The said Conciliator after holding meetings with the parties, had submitted a report to this Court. The said report was challenged by Respondent No.7 herein by filing his objections before this Court. The said objections were rejected by this Court and it appears that an order came to be passed by this Court on 6.10.1999, which order came to be challenged before the Apex Court by way of Civil Appeal No.3247 of 2000 (arising out of the S.L.P. Civil No.73539 of 1999). The said SLP came to be disposed of by the Apex Court by its order dated 5.5.2000 by which order the Apex Court set aside the order dated 6.10.1999 as well as the settlement agreement dated 31.8.1999 filed by the Conciliator before this Court. This Court was directed to dispose of the above Writ Petition afresh on merits and in accordance with law. This is how the present Petition has been placed for hearing before

us.

. On behalf of the Respondents, an affidavit has been filed on behalf of Respondent No.7 herein. The said affidavit supports the order passed by MHADA accepting the claim of Respondent No.7 in respect of the said tenement/flat.

5. We have heard Mr.G.K. Masand for the Petitioners., Mr.G.W. Mattos, AGP for Respondent Nos.2 and 3 and Mr.V.T. Lulia the learned counsel for main contesting Respondent No.7. On behalf of the Petitioners Mr.Masand made the following submissions in respect of the order passed by the Appellate Authority dated 23.4.97. The Appellate Officer himself was acting as Competent Authority before his promotion to the post of Appellate Authority. Having substantially heard the matter as a Competent Authority, it was improper on the part of Respondent No.4 to hear the same matter as an Appellate Authority. Insofar as two orders passed by the Estate Manager both dated 18.12.98, is the submission of Mr.Masand, that this Court vide its order dated 7.10.98 had directed Respondent No.2 in the said Petition, i.e. Chief Officer to consider the claim and therefore, it was improper for the Chief Officer

to direct the Estate Manager to hear the Petitioner and Respondent No.7 in respect of their claims. The real submission of Mr.Masand is that the Estate Manager had not granted a proper opportunity to the Petitioner to produce the relevant material in support of his claim and, therefore, the order passed was in breach of the principles of natural justice. The learned counsel for the Petitioner drew our attention to the order passed by the Division Bench of this Court dated 7.10.1998 in Writ Petition No.5072 of 1998, by which order the matter was remanded to MHADA so as to enable the Petitioner and Respondent No.7 to set up their respective claims for regularisation of their occupation before Respondent No.2 who was the Chief Officer of MHADA.

6. On behalf of Respondent No.2 and 3, the learned AGP Shri Mattos submitted that under the Maharashtra Housing and Area Development Board (Establishment, Sale, Transfer and Exchange of Tenements) Regulations, 1981, it is the Estate Manager, who is the Competent Authority in the cases falling under Section 66 of the said Act and therefore, the Chief Officer had correctly directed the Estate Manager to decide the claims of the Petitioner and Respondent No.7. The order of the

Division Bench dated 7.10.1998 would have to be construed in the context of the Act and the Estate Management Regulations framed under the said Act. The Petitioner having appeared before the Estate Manager, as well as having filed an Appeal before the Appellate Officer, is now estopped from challenging the jurisdiction of the Estate Manager.

. As regards the violation of principles of natural justice as alleged by Mr.Masand, the learned AGP submitted that sufficient opportunity was granted to the Petitioner to produce the relevant documents, but the Petitioner failed to produce the same. Respondent No.7 however, produced the relevant documents which are germane to regularisation, like the N.O.C. from the previous owner, as well as the N.O.C. from the society and in view of such evidence produced by Respondent No.7, the tenement/flat was regularised in his name. The learned AGP therefore, submitted that there was no violation of principles of natural justice and it is a plain and simple case where the Petitioners had failed to substantiate his claim before the authority.

. On behalf of Respondent No.7, Mr.Lulia, the learned counsel submitted that his client - Respondent

No.7 had contributed substantially towards the consideration which was paid for tenement/flat in question to the original allottee - Mr.Chadha. It was also submitted by Mr.Lulia that the Petitioner does not have any document in his possession to substantiate his claim over the tenement/flat in question.

7. We have bestowed our anxious consideration to the rival contentions. It is significant to note that by the order dated 7.10.1998 passed in earlier Writ Petition No.5072 of 1998, this Court looking to the controversy in question, had directed the Petitioner and Respondent No.7 to set up their claim before Respondent No.2. The said order of this Court dated 7.10.98 has become final and binding. It would, therefore, not be open for the Petitioners in the present Petition to challenge the order passed by the Appellate Authority dated 24.3.97 on any ground. The dispute in question is as regards the regularisation of the tenement/flat in question, the Petitioner and Respondent No.7 pursuant to the said order,appeared before the Competent Authority and set up their claims. The Competent Authority on consideration of the material produced by Respondent No.7, decided in his favour and rejected the claim of the Petitioner.

In so far as the jurisdiction of the Competent Authority is concerned, looking to the provisions of the said Act and Estate Management Regulation, the Competent Authority would be the Estate Manager, as the dispute has arisen on account of the action taken by MHADA under the provisions of Section 66 of the MHADA Act. The Regulation 3(5) of the said Regulation defines the duties and functions of the Estate Manager, one of which is the jurisdiction in the cases reported under Section 66 of the said Act. A case for regularisation would only arise, when there is an unauthorised occupation. In the present case, the Division Bench had passed the order in a Writ Petition challenging the order of Eviction dated 24.3.97. The order of the Division Bench would therefore have to be considered in the context of the said statutory regulations. In that view of the matter, we do not find any substance in the contention of the Petitioners that the Estate Manager had exercised the powers in violation of the said order dated 7.10.1998. In any event, the Petitioners are now estopped from challenging the jurisdiction of the Estate Manager having appeared before him pursuant to the order passed by this Court.

8. In so far as the violation of the principles

of natural justice are concerned, we find considerable ment substance in the contention of the learned counsel for the Petitioner. In our view, a proper opportunity should have been given to the Petitioner by the Estate Manager and should not have merely decided the same on account of the fact that the Petitioner could not produce any documents. It is the case of the Petitioners that though the hearing was fixed on 25.11.98 vide letter dated 20.11.98 by the Respondent No.3, no such hearing took place on the said date and the Petitioner No.1 was informed that the next date would be communicated to the Petitioners. The Petitioners were, therefore, shocked and surprised to receive letter dated 18.12.98 on 22.12.98. By the said letter it is communicated to the Petitioners that since the Petitioners had failed to produce the NOC from the original tenants as well as the Co-operative Society, the Petitioners claim for regularisation could not be considered. It is significant to note that the said letter dated 18.12.98 does not refer to the earlier correspondence entered into by the Petitioners. The said letter also does not refer to the letter dated 20.11.98 by which letter hearing was fixed on 25.11.98. The Competent Authority merely by a cryptic order has rejected the claim of the Petitioners. In our view, therefore, a

proper opportunity was not given to the Petitioners to state their claim. The matter would therefore, have to be remanded back to the Competent Authority for a decision afresh on the said issue. The Competent Authority to allow the Petitioners a proper opportunity to substantiate their claim in respect of the said tenement/flat in question.

9. In that view of the matter, the Petition is allowed. The impugned orders both dated 18.12.1998 one rejecting the claim of the Petitioner and the other accepting the claim of Respondent No.7 are set aside and the matter is remanded back to the Estate Manager for consideration afresh as regards the issue of regularisation. On such remand, the Estate Manager to give a proper opportunity to both the Petitioners and the Respondent No.7 and thereafter to decide the matter in accordance with law within three months from date.

10. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)